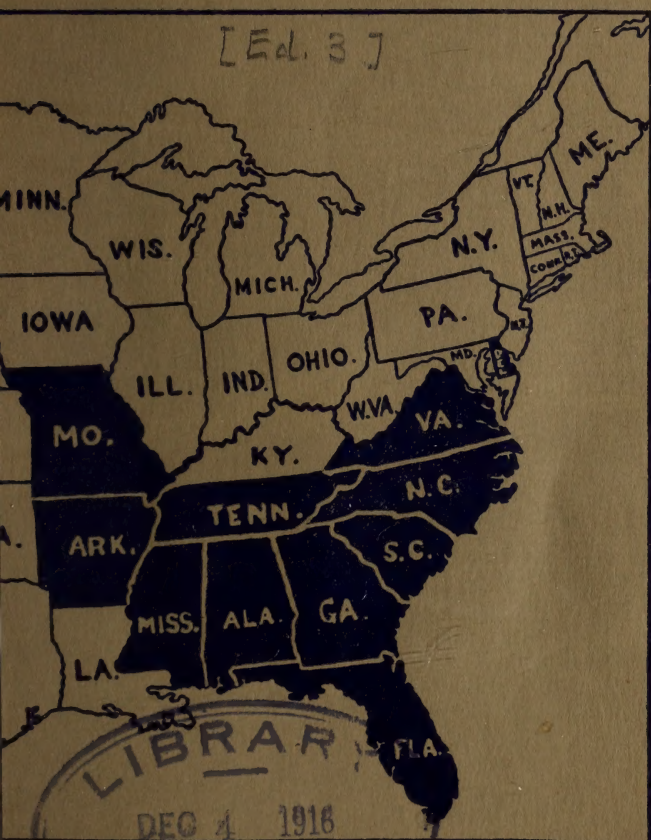


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# Standards for Workmen's Compensation Laws



AMERICAN ASSOCIATION FOR LABOR  
LEGISLATION

131 East 23d Street, New York City

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## ANNOUNCEMENT

This is the third annual edition of this little pamphlet.

During the first five years of agitation for workmen's compensation laws in the United States, the Association for Labor Legislation believed it could best serve the cause by collecting and disseminating information. It analyzed and published up-to-date reviews of legislation. It assisted in the creation of official commissions and helped to bring them together in national meetings. It organized the first American conferences on Occupational Diseases and on Social Insurance. It assisted with information, urged well-tested improvements, and pointed out obvious shortcomings in proposed legislation.

Since April, 1911, when the first general State compensation law to go into effect and stay in effect was enacted, thirty-two states, besides Porto Rico and the territories of Alaska and Hawaii, have enacted compensation laws, all more or less inadequate. Pioneer efforts were sometimes too cautious and sometimes too bold. A few daring advances were repulsed by the courts, while others were accepted as sound contributions to social insurance. In the majority of instances the first steps, in the light of subsequent experience, now appear to have been somewhat halting and unduly conservative.

It is practically certain that within the next five years numerous bills will be drafted to strengthen these existing laws and to extend the compensation system over the remaining sixteen States. The time, therefore, seems opportune for an appraisal of results and for the adoption of new standards, based upon the first five years' experience.

Throughout the period of agitation our special committee, composed of citizens of practical experience in walks of life which permitted them as a working committee to observe keenly and judge impartially, has studied this problem.

After repeated conferences for discussion and final revision, this committee submits its conclusions in the form of the following standards, which it hopes may be a real influence in the constructive period of workmen's compensation legislation now before the country. The Association for Labor Legislation embodied these standards in the bill providing compensation for injured employees of the federal government which passed both Houses of Congress almost unanimously and was signed by President Wilson September 7, 1916. It is hoped that these standards may help to point the way toward that desirable uniformity in legislation which shall deal liberally with the injured workman and his dependents, fairly with the employer, and justly with the State.

JOHN B. ANDREWS, *Secretary*,  
American Association for Labor Legislation.

New York, October 1, 1916.

# STANDARDS FOR WORKMEN'S COMPENSATION LAWS

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Recommended by the

AMERICAN ASSOCIATION FOR LABOR LEGISLATION

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In the opinion of the American Association for Labor Legislation the following features are essential to satisfactory workmen's compensation laws:

**I. Scale of Compensation.** Assuming machinery to insure the prompt payment of the compensation required by law, the scale of payments is the most important feature of the system. The strongest argument for compensation to all injured workmen or to their dependents is that shortened lives and maimed limbs due to industrial injuries are just as much expenses of production, which should be met by those conducting industry for their own profit, as are used-up raw materials or worn-out tools and machinery. The whole expense of losses to capital is necessarily borne by the employer. The whole expense of the personal losses due to injuries is the loss in wages sustained and the expenses for medical care during incapacity. The only logical reason for not imposing, through the employers, this entire expense on every industry that occasions it, is that injured workers must not be deprived of a motive for returning to work and to independent self-support as soon as they are able to do so. The compensation act, therefore, should provide for the expense of medical attendance up to a reasonable amount, and for the payment of such a proportion of wages to the victim of the injury during his incapacity, or to his dependents if he be killed, as will provide for the resulting needs and yet not encourage malingering. The following scale is believed to conform to these requirements and to be the lowest that should be inserted in any compensation law.

**1. Medical Attendance.** The employer should be required to furnish necessary medical, surgical and hospital services and supplies for a reasonable



period (to be determined by the Accident Board). The Accident Board should be empowered to establish a schedule of physicians' and hospital fees and to control all such charges.

All of the acts except those of Alaska, Kansas, New Hampshire, Washington and Wyoming provide for medical attendance. In California, Connecticut, Maryland, Ohio, Oregon, Porto Rico and West Virginia, and under the federal law for government employees, the period during which such services and supplies are to be furnished is left to the discretion of the Accident Board. In California, Connecticut, Indiana, Maine, Massachusetts, Michigan, Nevada, New York, Oklahoma, Porto Rico, Rhode Island, Texas and Wisconsin, and under the federal law, this board controls the amount of such service and supplies. In Maine and Pennsylvania the amount payable may be increased in the discretion of the board in case a major surgical operation is required. In Indiana, Kentucky, Maryland, New York and Oklahoma no charges of physicians and hospitals are enforceable unless approved by it.

2. Waiting Period. No compensation should be paid for a definite period—to be not less than three nor more than seven days—at the beginning of disability.

In Illinois, Louisiana, Maryland, Nevada, Ohio, Texas, West Virginia and Wisconsin, and under the federal law, the waiting period is as here recommended. In Oregon, Porto Rico and Washington there is no waiting period.

3. Compensation for Total Disability. The disabled workman should receive during disability  $66\frac{2}{3}$  per cent of wages, compensation not to exceed \$20 a week. If he is a minor, he should, after reaching twenty-one, receive  $66\frac{2}{3}$  per cent of the wages of able-bodied men in the occupation group to which he belonged. If his wages are less than \$5 a week, his compensation should be the full amount of his wages.

All of the acts except those of Alaska, Oregon, Washington and Wyoming base the compensation on a percentage of wages, rather than on a flat rate regardless of the wages.

The percentage of wages here recommended is the same as in Massachusetts, New York and Ohio, and in the federal law. Porto Rico provides 75 per cent, California, Kentucky and Wisconsin provide 65 per cent, while Hawaii and Texas provide 60 per cent.

In California, Colorado, Illinois, Maryland, Montana, New York, Ohio and West Virginia compensation for permanent total disability is allowed for life, and in Nebraska, Oregon and Washington, and under the federal law, compensation for total disability is payable during the continuance of the disability.

The fact that the injured employee is a minor is recognized in fixing compensation in California, Colorado, Illinois, Iowa, Maryland, Massachusetts, New York, Ohio, Oklahoma and Wisconsin, and under the federal law.

4. Compensation for Partial Disability. The workman who is only partially disabled should receive  $66\frac{2}{3}$  per cent of the difference between his wages before the injury and his wage-earning capacity after the injury, compensation not to exceed \$20 a week, with provisions for minors, and for workmen earning less than \$5, similar to those in the case of total disability.

The principle of basing compensation for partial disability upon loss of earning power is adopted, with respect to temporary partial disability, in all the acts in this country except those of Alaska, Iowa, New Jersey, Porto Rico and Wyoming; and is adopted, with respect to permanent partial disability, in the acts of Arizona, California, Colorado, Kansas, Massachusetts, New Hampshire, Rhode Island, Texas, Washington, West Virginia and the federal government.

#### 5. Compensation for Death.

(1) **Funeral Expenses.** The employer should be required to pay a sum not exceeding \$100 for funeral expenses, in addition to any other compensation.

In California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Vermont, Washington, West Virginia and Wyoming, and under the federal law, funeral expenses are paid in all cases of death, whether or not there are dependents. The same is true in Maryland, unless the decedent's estate is large enough to pay such expense. The maximum limit is \$200 in Maine, Massachusetts, Michigan and Rhode Island, while Alaska, Illinois and Ohio allow \$150, and Nevada \$125.

(2) **Compensation for Widow.** If living with the decedent at the time of his death, or if dependent, the widow should be granted 35 per cent of his



wages until her death or remarriage, with a lump sum on remarriage equal to two years' compensation.

The method of compensation for cases of death recommended in this and in the succeeding paragraphs is substantially the same as in Hawaii, Louisiana, Minnesota, Nevada, New York, Pennsylvania and Vermont, and under the federal law. The provision for a lump sum payment to the widow on remarriage is adopted in Minnesota, Nevada, New York, Oregon, Washington and West Virginia.

(3) **Compensation for Widower.** If living with the decedent at the time of her death and dependent upon her support, the widower should receive 35 per cent of her wages, or a proportionate amount if his dependency is only partial, to be paid until his death or remarriage.

(4) **Compensation for Widow or Widower and Children.** In addition to the compensation provided for the widow and widower, 10 per cent should be allowed for each child under eighteen, not to exceed a total of  $66\frac{2}{3}$  per cent for the widow or widower and children. Compensation on account of a child should cease when it dies, marries or reaches the age of eighteen.

(5) **Compensation to Children if There Be No Widow or Widower.** In case children are left without any surviving parent 25 per cent should be paid for one child under eighteen, and 10 per cent for each additional such child, to be divided among such children share and share alike, not exceeding a total of  $66\frac{2}{3}$  per cent. Compensation on account of any such child should cease when it dies, marries or reaches the age of eighteen.

(6) **Compensation to Parents, Brothers, Sisters, Grandchildren and Grandparents if Dependent.** For such classes of dependents 25 per cent should be paid for one wholly dependent, and 5 per cent additional for each additional person wholly dependent, divided among such wholly dependent persons share and share alike, and a proportionate amount (to be determined by the Accident Board)



if dependency is only partial, to be divided among the persons wholly or partially dependent according to the degree of dependency as determined by the Accident Board. These percentages should be paid in cases where there is no widow, widower, or child. Where there is a widow, widower, or child, the members of this class should receive as much of these percentages as, when added to the total percentage payable to the widow or widower or child, will not exceed a total of  $66\frac{2}{3}$  per cent. Compensation to members of this class should be paid only during dependency.

(7) **Compensation for Alien Non-Resident Dependents.** Aliens should be placed on the same footing as other dependents.

In Hawaii, New Hampshire and New Jersey alone are alien non-resident dependents expressly and entirely excluded from compensation. In Maryland, Michigan, Minnesota, Nevada, West Virginia and Wisconsin and, in part, in Colorado, Connecticut, Kansas, Kentucky, Maine, Montana, Nebraska, New York, Oklahoma, Oregon, Pennsylvania, Washington and Wyoming they are expressly included. In the other States they are apparently included in the absence of any reference to them.

(8) **Maximum and Minimum Compensation for Death.** The wages on which death compensation is based should be taken to be not more than \$30 per week nor less than \$10 per week; but the total amount of the weekly compensation should not be more than the actual wages.

**6. Commutation of Periodical Compensation Payments.** If the beneficiary is or is about to become a non-resident of the United States, or if the monthly payments to the beneficiary are less than \$5 a month, or if the Accident Board determines that it would be to the best interests of the beneficiary, the employer should be permitted to discharge his liability for future payments by the immediate payment of a lump sum equal to the present value of all the future payments computed at 4 per cent true discount, compounded annually. For this purpose the expectancy of life should be

determined according to a suitable mortality table, to be selected at the discretion of the Accident Board, and the probability of the happening of any contingency, such as marriage or the termination of disability, affecting the amount or duration of the compensation, should be disregarded.

Substantially similar provisions are found in nearly all the States and in the federal law.

## **II. Employments to Be Included.** It is

believed that sufficient progress has now been made in public education on the problem, and in the development of efficient and economical machinery for insuring the employer against his compensation liability, to justify the inclusion in the system of all employments. The only exception which should be made is of casual employees in the service of employers who have only such employees and who, therefore, cannot fairly be required to carry compensation insurance policies. Such policies, on payment of a small additional premium, are now drawn so as to embrace casual as well as regular employees. No serious burden is, therefore, entailed on employers, even of domestic servants, in making them liable to pay compensation even to casual employees.

The principle of limiting the act to so-called "hazardous employments" is adopted only in Arizona, Kansas, Louisiana, Maryland, Montana, New Hampshire, New York, Oklahoma, Oregon, Washington and Wyoming, and, in part, in Illinois, and in most of these States employers and employees in other employments may elect to come under compensation.

Farm labor and domestic service are excepted from the operation of the act in nearly all the States, either expressly or indirectly.

In Alaska, Kansas, Kentucky, Nebraska, Nevada, Ohio, Oklahoma, Porto Rico, Texas and Wyoming the operation of the act is limited to employers employing more than a certain number of employees, ranging from one to five; and in Colorado, Connecticut, Maine, Rhode Island, Vermont and Wisconsin employers of less than a certain number are not subjected to the abrogation of the defenses in case they refuse to elect compensation. In all the other States there is no distinction as to the number of employees.

In Iowa, New Hampshire, Washington and Wyoming, and apparently in Maryland, the employees to be included are limited to persons engaged in the hazardous part of the employment. In all the other States persons engaged in clerical work as well as those engaged in manual work are included.



Casual employees are included in Alaska, Kansas, Louisiana, Nevada, New York and Oklahoma, and under the federal law.

### **III. Injuries to Be Included.**      Com-

pensation should be provided for all personal injuries in the course of employment, and death resulting therefrom within six years, but no compensation should be allowed where the injury is occasioned by the wilful intention of the employee to bring about the injury or death of himself or of another. The act should embrace occupational diseases which, when contracted in the course of employment, should be considered personal injuries for which compensation is payable.

In all the States except Montana, Ohio, Pennsylvania, Texas, Washington, West Virginia and Wyoming the injury must arise "out of" as well as "in the course of" the employment.

The principle of limiting the time within which death must occur in order to form a basis for compensation is found in Arizona, California, Colorado, Connecticut, Hawaii, Kentucky, Louisiana, Maryland, Nebraska, Ohio, Pennsylvania, Porto Rico, Vermont and West Virginia, and in the federal law.

The exception of injuries caused by the wilful intention of the employee is found in Alaska, Colorado, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Porto Rico, Rhode Island, Vermont, Washington, West Virginia and Wisconsin, and in the federal law.

Occupational diseases are included as personal injuries entitling the employee to compensation in California and Massachusetts, and in the federal law.

### **IV. Other Remedies Than Those Provided by the Compensation Act.**      One of

the weightiest arguments against the outworn system of employers' liability is that it causes vast sums to be frittered away in law suits that should be used in caring for the victims of accidents. To avoid this waste the compensation provided by the act should be THE EXCLUSIVE REMEDY. If the employer has been guilty of personal negligence, even going to the point of violating a safety statute, his punishment should be through a special action prosecuted by the State itself, not through a civil suit for damages carried on at the expense and risk of the injured employee.

This is the law in Connecticut, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Rhode Island, Wisconsin and Wyoming, except that in a few of these States if the employer fails to insure the payment of compensation the injured employee has the option of claiming compensation or of suing at law with the defenses removed.

**V. Security for the Payment of Compensation Awards.** The supreme tests of a compensation system are, first, the incentive provided for reducing accidents to the utmost, and, second, the promptness and certainty with which compensation claims are met. The strongest incentive toward prevention results from imposing the whole expense of compensation upon the employer. The irregularity and uncertainty of accidents, however, make this policy inexpedient for small employers with limited financial resources. Security can only be attained through some system of insurance. Employers should, therefore, be required to insure their compensation liability.

Alaska, Arizona, California, Kansas, Louisiana, Minnesota, Nebraska and New Jersey are the only States which do not require in some form or other the employer to secure the payment of compensation either by insurance or by the giving of a bond.

In accordance with the plans of insurance at present provided for, employers may either:

1. Maintain their own insurance fund subject to the approval of the Accident Board;

In Colorado, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Montana, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, West Virginia and Wisconsin the employer is permitted to carry his own insurance, if satisfactory to the administrative authority.

2. Insure in a Mutual Association authorized to insure compensation liability;

Insurance in a mutual association is permitted in most States, including California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas and Wisconsin.

3. Insure in a State Insurance Fund managed by the Accident Board upon



the same principles and subject to the same general requirements as those governing Mutual Insurance Associations;

State insurance funds are established in California, Colorado, Maryland, Michigan, Montana, Ohio, Oregon, New York, Nevada, Pennsylvania, Porto Rico, Washington, West Virginia and Wyoming.

4. Insure in a private stock company, such companies to be subjected to the most rigid regulation as regards the rates to be charged, the agents' commissions to be paid, and the methods of compensation to be used, so that the State may be spared the experience of some States which have tried to organize an efficient State insurance system while subjecting such system to the unscrupulous competitive methods unfortunately employed by too many agents of the casualty companies.

Insurance in private stock companies is allowed in every State except Nevada, Oregon, Porto Rico, Washington, West Virginia and Wyoming.

## **VI. Organization of Accident Board.**

It is essential to the successful operation of the compensation system that an Accident Board be created. This board should consist of three or five members appointed by the Governor with the consent of the Senate. The board should have power to employ necessary assistants. Its members should be required to devote their entire time to its work and should not be permitted to carry on any other business or profession for profit. The entire cost of administration of the Accident Board, including the administrative expenses of conducting the State Insurance Fund managed by the Accident Board, should be paid out of an appropriation made by the State.

Accident boards are provided in all of the States except Alaska, Arizona, Kansas, Louisiana, Minnesota, Nebraska, New Hampshire, Rhode Island and Wyoming.

## **VII. Procedure for Settlement of Compensation Claims.**

Provision should be made for the settlement of compensation claims either by agreement subject to the approval of the Accident Board, or if no such agreement be reached, by arbitration before a committee composed as follows: One representative of the employer, one

representative of the claimant, one member of the Accident Board or an authorized deputy. The decision of this committee should be made conclusive, unless the appeal therefrom is made to the Accident Board within a specified time. The Accident Board's disposition of the case on appeal from the Arbitration Committee should be final and conclusive unless appeal therefrom is taken within a specified time. Appeals from decrees of the Accident Board should not be allowed, except on questions of law, and should be carried direct to the highest court.

Agreements must be approved by the Accident Board in California, Colorado, Connecticut, Hawaii, Indiana, Kentucky, Maine, Massachusetts, Michigan, New York, Oklahoma, Pennsylvania and Vermont. In Iowa and Wisconsin agreements may be disapproved within a certain time. In Illinois an agreement to waive the provisions of the act as to the amount payable must be approved by the board. In Minnesota and Rhode Island agreements must be approved by the court. The same is true in New Jersey in the case of minors.

The procedure here recommended for the settlement of compensation where no agreement is reached is substantially the same as in Hawaii, Illinois, Iowa, Massachusetts, Michigan and Oklahoma.

**VIII. Reports of Accidents.** The bill should contain provisions similar to those of the Standard Accident Reporting Bill of the American Association for Labor Legislation, now in use for about half the industrial population of the country, requiring full and accurate reports of all industrial accidents as a basis for computation of future industrial accident rates and for future safety regulations to decrease or prevent accidents.

The essential features of workmen's compensation law here outlined are urged on the basis of a careful study of the whole question and of the compensation legislation not only of other States but of European countries. As one of the functions of the Association for Labor Legislation is to promote the enactment of uniform labor laws, it earnestly recommends to the careful consideration of legislators and of those who are interested in social progress the country over, the foregoing just, reasonable and progressive workmen's compensation standards.



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The Association for Labor Legislation is a scientific society with national sections in fifteen different countries. The American Section, headquarters 131 East 23d Street, New York City, is supported entirely by contributions from its three thousand members representing all groups in every state in the Union.

If you wish to be kept in touch with this expanding work you should **become a member**. Membership will entitle you to many privileges in addition to the publications, among which is the quarterly **American Labor Legislation Review**. The minimum annual subscription is \$3. A good time to become a member is **now**.

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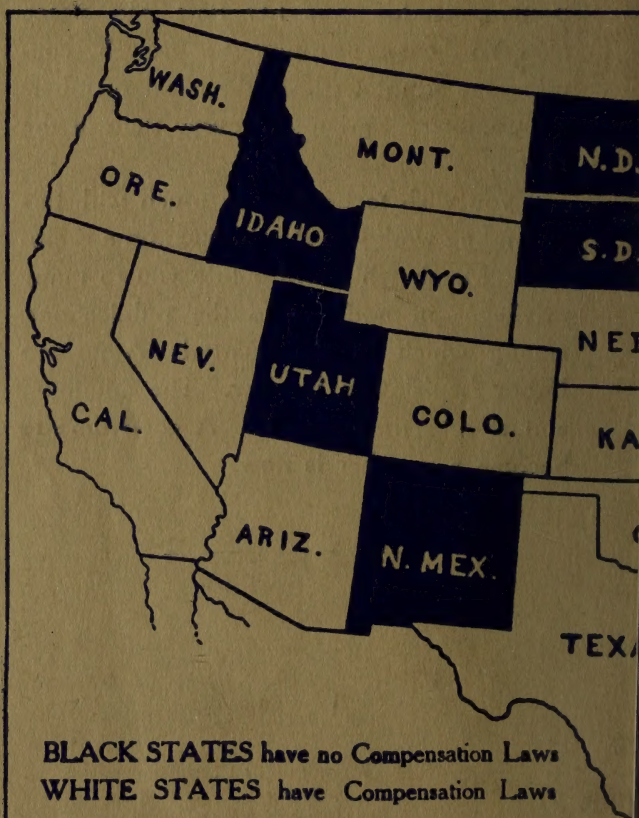
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The Federal Workmen's Compensation measure, drafted by the American Association for Labor Legislation and embodying these standards, was adopted by the United States Government for its own half million employees, and went into effect September 7, 1916.

Can your State measure up to these standards?



**TWO-THIRDS OF THE MAP IS NOW COVERED**  
Within the past six years 32 of the 48 States, in addition to Porto Rico and the two Territories of Alaska and Hawaii, have adopted compensation laws